IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
:::

JUDGMENT

Lrs of Bhanwar Lal Soni
vs
The State of Rajasthan & Ors.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.804/1994
AGAINST THE ORDER DATED 12.9.1994 IN S.B. CIVIL WRIT PETITION NO.3027/1983.

DATE OF ORDER :: 20.7.2006

PRESENT

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.Rajesh Choudhary and Mr. Rajesh Parihar for Mr. Suresh Shrimali, for the appellant.

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BY THE COURT (Per Hon'ble the Chief Justice):

This Special Appeal arises from S.B. Civil Writ Petition No.3027/1983. Bhanwar Lal Soni (hereinafter referred to as 'the petitioner') filed the writ petition for quashing the order by which he had been removed from service as a measure of punishment in a disciplinary proceedings on charges. The punishment was challenged on the ground that on account of non-payment of allowance during the

period of suspension, he could not effectively defend himself in the proceedings. The respondents took the stand that the petitioner was not present at the Headquarter fixed during suspension and as such he could not take the plea of non-grant of subsistence allowance as a ground to challenge the result of departmental proceedings.

The learned Single Judge in the judgment impugned upholding the stand of the respondents observed that when an employee is suspended, he does not become a free bird, and he does not get a licence to remain away from the place of Headquarter. In view of the admitted position that the petitioner was not present at the Headquarter, the learned Single Judge rejected the case of the petitioner holding that non-payment of subsistence allowance did not vitiate the order of punishment and accordingly, dismissed the writ petition.

Counsel for the appellants too a fair stand. He submitted that the petitioner died during pendency of the writ petition on 10.3.89. The appellants hereinafter were substituted in his place as his legal legal representatives. On account of his death, even if another view is taken and it is held that on account of non-payment of subsistence allowance the petitioner was prevented from effectively participating in the disciplinary proceedings vitiating the order of punishment, at this stage, the matter cannot be remitted back for fresh inquiry, which in

the ordinary course would have been the consequence of such a finding. In the circumstances, the appellants would be satisfied if a direction is issued to the respondents to pay the legal dues of the petitioner towards subsistence allowance to the appellants.

Rule 13 of the of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (in short 'CCA Rules) provides for suspension of a Government servant (a) where a disciplinary proceedings against him is contemplated or is pending, or (b) where a case against him in respect of any criminal offence is under investigation or trial. Rule 53 of the Rajasthan Service Rules (in short RSR) provides for payment of subsistence grant. It lays down that a Government servant under suspension shall be entitled to among other things to subsistence allowance at an amount equal to the leave salary which he would have drawn if he had been on leave on half pay and in addition dearness allowance based on such leave salary. The rule lays down the methodology of computation of subsistence allowance which it is not necessary to notice for the purpose of this case.

It is relevant to mention here that the State Government has issued circulars and instructions from time to time to give effect to the provisions relating to suspension and payment of subsistence allowance. The instructions are contained in Appendix-I to the C.C.A. Rules published on behalf of the State of Rajasthan. Para 3 thereof deals with

the presence of suspended Government employees at their headquarter during the period of suspension. Counsel referred to para 4, particularly circular No.F.6(75) Apptts./A-III/69, dated 22.5.1970. This circular was issued on reference as to whether Government servant under suspension who leaves headquarter without permission is entitled to subsistence grant for the period of absence. The Government clarified the position as under: -

> "The above exposition clearly shows that subsistence grant can not be refused altogether to a Government servant under suspension in any circumstances may warrant. The absence from Headquarters during suspension has two fold effect i.e. it may not contribute to the prolongation of the period of suspension. In case the absence from headquarters has not contributed to the prolongation of the period of suspension, there could be no reduction in the amount of subsistence grant. But where such absence from headquarters contributes to the prolongation of the period of suspension, the amount of subsistence grant can be reduced in terms of provision to Rule 53. But it can not be denied altogether. The only other remedy available is to initiate disciplinary action against the the Government servant under suspension.
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> To sum up, subsistence grant cannot be refused altogether to a Government servant under suspension (not covered by proviso to sub-rule 2 of Rule 53 of R.S.R.) but it can be reduced either for his absence from headquarters without prior permission or for engaging himself in any other employment, business etc. without prior permission of the competent authority, and for these breaches of rules separate disciplinary action should be initiated as indicated above."

Having regard to the above decision of the State Government in

terms of which subsistence grant cannot be refused altogether and absence from headquarter may be a ground to take disciplinary action against the government servant concerned, we are of the view that notwithstanding, the respondents' stand that the petitioner was absent from headquarter during the relevant period, his claim for payment of subsistence grant cannot refused by the State Government. It prima facie appears that the alleged absence of the petitioner from the headquarter did not contribute to prolongation of departmental inquiry. It appears from the record that the disciplinary proceedings commenced with the submission of the charge-sheet on or about 3.2.78 and the final order was passed on 25.10.79 i.e. within a period of about one year and ten months.

We accordingly direct the State Government to compute the claim of the petitioner for subsistence grant for the suspension period and pay the amount found due to his wife Smt. Lali Devi Wd/o Late Shri Bhanwar Lal Soni, who figures as appellant no.1 in this appeal. The petitioner appellant no.1 will also be entitled to simple interest @ 6% from the due date(s). The exercise should be completed and payment made within three months of receipt/production of a copy of this order.

The appeal is accordingly disposed of.

(MOHAMMAD RAFIQ),J. **(S.N. JHA), CJ.**

c.p.goyal/-